

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:INTL:B06

PLR-114407-20

Date:

October 26, 2020

Legend

Taxpayer =

Opco =

Parent =

Individual A =

Individual B =

Individual C =

Individual D =

Trust A =

Trust B =

Trust C =

Trust D =

Accounting Firm =

Year 1 =

Date 1 =

Date 2 =

Date 3 =

Dear :

This ruling responds to your letter dated June 24, 2020 requesting that the Internal Revenue Service ("Service") grant Taxpayer an extension of time under Treas. Reg. §§

301.9100-1 and 301.9100-3 to file Form 4876-A ("Election To Be Treated as an Interest Charge DISC")¹ for Taxpayer's first taxable year.

Facts

Taxpayer is a corporation owned equally by Individuals A, B, C, and D, who are related by blood and/or marriage. Opco is a C corporation owned by Parent. Parent is also classified as a C corporation for Federal tax purposes. Parent is owned equally by Trusts A, B, C, and D.

Taxpayer represents that Individuals A, B, C, and D are the grantors of Trusts A, B, C, and D, but that the individuals do not have any control over or beneficial interest in the trusts' ownership in Opco and Parent.

Opco manufactures laboratory equipment and supplies. Opco exports some of its output, mostly to unrelated parties.

In Year 1, after discussions with various external tax advisors, Opco decided to undertake a corporate restructuring. This restructuring included terminating an S-corporation election that Opco had in place.

Opco consulted Accounting Firm about the restructuring in connection with the involvement of an entity that Taxpayer describes as "Old DISC," for which Accounting Firm had previously provided tax compliance services. Accounting Firm advised that Old DISC would not provide certain tax benefits after Opco terminated its own S-corporation election. Accounting Firm recommended that Opco form a new corporation, owned directly by Individuals A, B, C and D, to serve as an IC-DISC.

Based on Accounting Firm's advice, Opco formed Taxpayer the next year, on Date 1, and dissolved Old DISC the next day. Opco's own small in-house tax department took responsibility for preparing Form 4876-A for Taxpayer and arranging for the form to be filed, included the task of filing it within 90 days of the beginning of Taxpayer's first taxable year on an "action item list," and believed that the filing had been duly made.

Taxpayer has had in place a commission agreement with Opco referencing the IC-DISC rules and has functioned consistently with an intent to serve solely as an IC-DISC since incorporation.

Accounting Firm prepared Taxpayer's first return on Form 1120-IC-DISC, "Interest Charge Domestic International Sales Corporation Return", and filed it by the Date 2 due date for that form, which came about a year after Taxpayer's incorporation. But then Taxpayer received a notice from the Service bearing Date 3 (a few months later) stating

¹ An Interest Charge Domestic International Sales Corporation ("IC-DISC") is the type of DISC for which the Internal Revenue Code provides for the years at issue. See I.R.C. § 995(f).

that the Service could not process the Form 1120-IC-DISC because it did not have a record of processing a Form 4876-A for Taxpayer.

Taxpayer immediately consulted Accounting Firm about the notice and searched its own records. Taxpayer soon determined that, contrary to Taxpayer's intent and understanding all along, Form 4876-A had not been filed.² A few months after that, and about two years after Taxpayer's incorporation, Taxpayer had Accounting Firm submit the extension ruling request letter.

Law and Analysis

Section 992(b)(1)(A) of the Internal Revenue Code (the "Code") provides that an election by a corporation to be treated as a DISC shall be made by such corporation for a taxable year at any time during the 90-day period immediately preceding the beginning of the taxable year, except that the Secretary may give his consent to the making of an election at such other times as he may designate.

Section 992(b)(1)(B) of the Code provides that such election shall be made in such manner as the Secretary shall prescribe and shall be valid only if all persons who are shareholders in such corporation on such first day of the first taxable year for which such election is effective consent to such election.

Temporary Treasury Regulation § 1.921-1T(b)(1) provides, in part, that a corporation electing IC-DISC status must file Form 4876-A and that a corporation electing to be treated as an IC-DISC for its first taxable year shall make its election within 60 days after the beginning of that year.

Treasury Regulation § 301.9100-1(c) provides, in part, that the Commissioner, in exercising the Commissioner's discretion, may grant a reasonable extension of time under the rules set forth in Treas. Reg. §§ 301.9100-2 and 301.9100-3 to make a regulatory election under all subtitles of the Code except subtitles E, G, H, and I.

Treasury Regulation § 301.9100-1(b) provides that a regulatory election is an election whose due date is prescribed by a regulation published in the Federal Register, or a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin. For this purpose, an election includes an application for relief in respect of tax.

Treasury Regulation § 301.9100-3(a) provides that requests for extensions of time for regulatory elections that do not meet the requirements of Treas. Reg. § 301.9100-2 (automatic extensions) must be made under the rules of Treas. Reg. § 301.9100-3. Requests for relief subject to Treas. Reg. § 301.9100-3 will be granted when the

² Taxpayer cited extra work for Opco's tax department in connection with an IRS audit as a factor potentially contributing to the failure to file Form 4876-A. Taxpayer also confirmed that the audit did not relate to DISC issues.

taxpayer provides the evidence (including affidavits described in Treas. Reg. § 301.9100-3(e)) to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that the grant of relief will not prejudice the interests of the Government.

Treas. Reg. § 301.91000-3(b)(1)(v) provides that a taxpayer is generally deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Conclusion

Based on the facts and representations submitted with Taxpayer's ruling request, we conclude that Taxpayer satisfies Treas. Reg. § 301.9100-3(a). Accordingly, Taxpayer is granted an extension of time of 90 days from the date of this ruling letter to file Form 4876-A. Such filing will be treated as a timely election to be treated as an IC-DISC for Taxpayer's first taxable year.

The granting of an extension in this ruling letter is not a determination that Taxpayer is otherwise eligible to make the election or to claim IC-DISC status or benefits. See Treas. Reg. § 301.9100-1(a).

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. In particular, no opinion is expressed or implied as to whether the commissions (or portions thereof) paid to Taxpayer by Opco may constitute taxable gifts. See, e.g., Rev. Rul. 81-54, 1981-1 C.B. 476.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

Christopher James Faiferlick
Branch Chief, Branch 6
(International)

cc: